

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MICHAEL L. JOHNSON,

Plaintiff,

v.

BRIAN BARNEY, *et al.*,

Defendants.

Case No. 1:21-cv-141

Judge Jeffery P. Hopkins

Chief Magistrate Judge Karen L.
Litkovitz

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on the Report and Recommendation (Doc. 103) and the Supplemental Report and Recommendation (Doc. 118) (together, the “R&Rs”) issued by Chief Magistrate Judge Karen L. Litkovitz on October 17, 2022, and December 22, 2022, respectively.¹ Both filings recommend that the Court dismiss this matter without prejudice as to Defendant Neff for failure to perfect service.

The R&Rs were issued in as a result of Plaintiff Michael Johnson’s failure to respond to the Order to show cause issued on September 26, 2022. Doc. 99. Pursuant to the Order, Johnson was required to show cause, in writing and within 15 days of the date of the Order, why the Court should not dismiss this case as to Defendant Neff for failure to perfect service pursuant to Fed. R. Civ. P. 4(m). *Id.* After no timely response appeared on the docket, the Court issued a recommendation that S.D. Ohio Case. No. 1:21-cv-155 be dismissed without prejudice as to Defendant Neff. Doc. 103. Thereafter, Johnson filed an objection (Doc. 109)

¹ The above-captioned case (*Barney*) has been consolidated with *Johnson v. Little, et al.*, S.D. Ohio Case No. 1:21-cv-171 (*Little*), and *Johnson v. Hill, et al.*, S.D. Ohio Case No. 1:21-cv-155 (*Hill*). See Docs. 13, 15.

and a motion for extension of time with a copy of a returned envelope attached (Doc. 115 at PageID 913), which appeared to reflect Johnson's timely attempt to comply with the Court's Order to show cause.

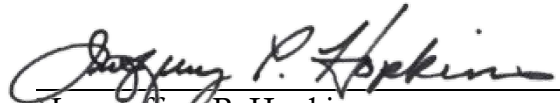
Upon review, the Magistrate Judge found that Johnson had not shown good cause for his failure to perfect service on Defendant Neff almost two years after filing the complaint in S.D. Ohio Case No. 1:21-cv-155, and recommended dismissal. Doc. 118.

After conducting a de novo review pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, this Court **OVERRULES** the Objection (Doc. 109), **ADOPTS** the R&Rs (Docs. 103, 118), and **DISMISSES** S.D. Ohio Case No. 1:21-cv-155 without prejudice as to Defendant Neff for failure to perfect service. This Court also agrees with the Magistrate Judge's recommendation that, pursuant to 28 U.S.C. § 1915(a)(3), any appeal may not proceed in forma pauperis as that appeal would not be taken in good faith.

The Court **DIRECTS** the Clerk to enter judgment accordingly.

IT IS SO ORDERED.

Dated: February 16, 2024



Hon. Jeffrey P. Hopkins
United States District Judge